IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1460 OF 2007

M/s.S.H.A.M.K. International Ltd. ..Petitioner.

V/s.

Income-tax Officer & Ors. ..Respondents.

Mr.K.B. Bhujle for petitioner.

Mr.Ashok Kotangale for respondents.

CORAM : F.I.REBELLO AND
J.P.DEVADHAR, JJ.

DATED : 23RD JULY, 2007.

P.C.:-

1. Rule. Heard learned counsel for the parties. By consent of the parties, petition is taken up for final hearing.

2. This petition is filed to challenge the order dated 26/2/2007 passed by the I.T.O. and the order dated 14/3/2007 passed by the C.I.T. whereby the application of the petitioner for stay of the demand raised pursuant to the assessment order dated 22/12/2006 passed in the assessment year 2004-05 during the pendency of the appeal before C.I.T. (A) has been rejected.

3. The grievance of the petitioner is that the

demands raised against the petitioner in the assessment order in question is wholly arbitrary and devoid of any merits. It is contended that major addition of Rs.2.30 crores has been made under section 68 of the Income Tax Act, 1961 as undisclosed income of the assessee even though receipt of the amounts through bank were reflected in the books and the identity of the person from whom the payments have been received have also been established. It is contended that the additions made in the assessment order by disallowing the expenses which ought to have been allowed as revenue expenditure are wholly unsustainable in law. It is contended that in the present case, the appeal filed against the assessment order is substantially heard. In the meantime, the revenue has issued garnishee notices to the petitioner's customers with a view to recover the demands raised as per the assessment order for AY 2004-05 which is causing great prejudice to the petitioner. Counsel for the revenue contended that in view of the huge demand, the steps taken to recover the tax cannot be faulted.

4. Admittedly, the appeal filed by the petitioner against the assessment order dated 22/12/2006 is already heard substantially and the matter is placed for further hearing before C.I.T. (A) on 25th July,

2007. Since the appeal is already heard substantially, without expressing any opinion on merits of the case, in our opinion, in the facts of the present case, the interest of justice would be met if the recovery of tax payable under the assessment order for AY 2004-05 is stayed till the disposal of the appeal pending before the C.I.T. (A) and for four weeks thereafter if the order is adverse to the petitioner. Since the recovery is stayed, the assessing officer is directed to revoke the garnishee notices issued to the petitioner's customers immediately.

5. Rule is made absolute in the above terms with no order as to costs.

(F.I.REBELLO, J.)

(J.P.DEVADHAR, J.)